

Public Utilities Committee Meeting
Record of Proceedings of Meeting April 3, 1999

Members Present: Gary Brockett, Ruth McIlrath, Roger Mills, Matt Brett, Sally Butz-Voss, and Mayor Young.
Guests Attending: Mr. Brown, Mr. D. Satava, and M/M Cotesworth.

The meeting was called to order at 9:40 A.M. by Brockett who stated that the . . .

Purpose of the meeting: The purpose of this meeting is to review the new information that was submitted to Council at the Meeting on March 29, 1999 and make a recommendation to Council. The information included:

1. Mr. Cotesworth passed out a copy of the Ohio Revised Code 6117.51 providing an exemption for structures more than two hundred feet from sewer.

Brockett reported: The Village Solicitor has advised me that the Village of South Russell is a Municipality and as such has "home rule". Consequently, the Ohio Revised Code does not apply to our Municipality. We may, and should, formulate whatever policy we feel is best for our Village.

2. Mr. Cotesworth passed out a copy of Ordinance No. 1979-21 and stated that he felt that the words "From and after the effective date" exempted his property from the ordinance.

Brockett stated: The Village Solicitor does not agree with this interpretation of the Ordinance. He feels that the discovery of the ordinance language does not change anything and that existing property owners are required to tie-in to sewer when it is available.

3. Both Mr. Cotesworth and Mr. Brown provided little information as to the cost of tie-in. Mr. Brown stated that he was having difficulty getting a quote and Mr. Cotesworth said he was having trouble getting a quote, but about \$58,000 for the back house might be a reasonable number.

Response: Documentation showing that compliance with the Ordinance would cost the home owner a great deal of money, or that the sanitary sewer is not "available and accessible" is perhaps the best argument that any property owner can give. But documentation is needed. It is not the responsibility of Council or the Village to provide this documentation, but rather it is the responsibility of the property owner. Lacking sufficient documentation, verbal arguments can not generally be relied upon as suitable documentation. Hence, we are still seeking some reliable estimate of how much it will cost to comply with the existing ordinance.

4. Mr. Cotesworth referred to a May, 1991 tank cleaning report as evidence that his septic tank is in fine working order.

Investigation showed that: Upon checking all of the tank cleaning reports it was

discovered that one was reported "in poor condition". It was repaired. Two were reported "in fair condition" and they are being connected to sanitary sewer. So out of over 300 tank reports, only 3 reported anything other than "in good condition" and all 3 either have been repaired or will be connected to sanitary sewer. Hence, the reliability of this document that the septic tank is working satisfactorily is very questionable.

5. Mr. Cotesworth stated that he had not had one complaint regarding contamination from his septic tank. Hence, there was no problem and no reason to tie-in to the sewer.

Observation: It is the responsibility of Council to enforce existing ordinances. It does not rely on the number of complaints which are made, but rather are residents complying with or ignoring existing ordinances. Clearly the Cotesworth properties are not complying with the existing ordinance No. 1979-21 and hence we are addressing this problem. It is our responsibility to do so.

6. Mr. Cotesworth stated that no one could pass the "test well" inspection and hence that test could not be relied upon as evidence that his systems are not working.

The Committee found that there are structures that do pass the "test well" inspection. This test can be relied upon as evidence that a septic tank is not currently polluting. But this is an extraneous point. The fact remains that Council has the responsibility to enforce existing ordinances unless there are compelling reasons why it should not. So far, this documentation has not been produced by the property owners.

7. Mr. Cotesworth stated that he had a letter from the County exempting him from sewer tie-in.

Investigation shows that because of a change in construction plans, i.e., the line went down the hill rather than stopping at the top and restarting at the bottom, there were a few properties that were not given proper notification regarding sewer tie-in. The Cotesworth properties were among them. Hence, the only way for the County to provide proper notification and for assessment would have been to start all over again. Starting over with the assessment and notification procedure would have caused a delay in construction and the contracts were already signed. Hence, it was more expedient just to provide a letter to some property owners, including M/M Cotesworth, stating that they did not have to connect to sanitary sewer at this time - and move ahead with construction.

In addition, it is not possible for the County to provide an exemption to a Municipality ordinance as this violates the "home rule". Such a letter could be considered by Council, but does not show compelling evidence as to why Council should not enforce the existing ordinance.

8. Mr. Cotesworth raised the issue of "What is fair". Should Council force an ordinance on anyone that isn't fair?

Certainly the question of what is "available and accessible" is an important one. As stated at the March 29, 1999 Council Meeting, "no one wants to impose a hardship on any property owner."

- But where is the documentation showing that sanitary sewer is not "available and accessible"? And who's responsibility is it to provide that documentation. Clearly, it is the responsibility of the property owner.

- Where is the documentation showing that these decades old systems work satisfactorily today. Again, it is the responsibility of the property owner to provide this documentation and lacking this documentation leaves Council in a difficult position of not knowing if it can/ should provide a variance to the existing ordinance.

Observations:

- 1.) Mr. Brown and Mr. Cotesworth should continue their attempt to get a cost estimate for complying with the existing ordinance. If that cost estimate demonstrates that sanitary sewer is not "available and accessible", then Council can look at other options. Some time deadline needs to be in place- maybe 60-120 days is reasonable, so that this doesn't go on indefinitely.
- 2.) Options may include another type of system acceptable to Council (and the Geauga County Health Dept.), or convincing evidence that the existing septic system is working satisfactorily. But the system- whatever it is- must work. This is not asking too much. How do we know that the existing or proposed system does not pollute?

We are willing to give an opportunity to demonstrate that

(a.) The current system works or

(b.) An alternate system will work at a lower cost

(Having first demonstrated that sanitary sewer is not "available and accessible".)

Lacking other evidence, Council will have to enforce the ordinance and have the property owners connect to sanitary sewer as required by the existing Ordinance.

Recommendation to Council:

(1.) The Committee agreed that the front house on the Cotesworth property should be required to connect to sanitary sewer which is clearly "available and accessible". But the back house, which is roughly 640 feet from the sewer line could cost between \$26,000 - \$42,000 to connect to the sanitary sewer. Hence, the back house could be granted a variance. Evidence that the existing (or proposed) system still works should be provided by the property owner to insure that it does not pollute the surrounding area.

(2.) Likewise, the Committee agreed that the Brown house is sufficiently far from the sanitary sewer (also about 640 feet) that it would probably cost the homeowner between \$25,000- 39,000 to connect. This may be sufficient basis for Council to grant the variance requested and that is the recommendation of the Committee. Again, the existing system, or any alternate system, should demonstrate that it does not pollute.

Respectfully submitted,

Gary L. Brockett